



## MEMORANDUM

June 17, 2016

To: Contract Support Cost Clients

From: HOBBS, STRAUS, DEAN & WALKER, LLP

*Geoff Strommer (by TAE)*

Re: *Contract Support Costs FY 2017 Appropriations Update*

The House and Senate Appropriations Committees have each approved their versions of the FY 2017 Interior, Environment and Related Agencies Appropriations bills. The Senate bill is S. 3068 and the report is S. Rept. 114-281. There are no assigned numbers yet for the House bill and report. In this Memorandum we report on the Contract Support Costs (CSC) provisions.

### The Committees:

- Recommended an indefinite appropriation for Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) contract support costs;
- Included in their reports the same estimate of CSC funds that will be needed as did the Administration: \$800 million for IHS, which is \$82 million over the FY 2016 estimate; and \$278 million for BIA, which is \$1 million over the FY 2016 estimate; and they
- Did not continue the proviso from FY 2016 that unspent CSC would count against the next year's requirement (see below).

Both Committees heeded the request of many tribes and tribal organizations and did not repeat the CSC language which was in the FY 2016 appropriations act that would effectively deny the carryover authority granted by the Indian Self-Determination and Education Assistance Act. Thus the pending FY 2017 appropriations bills do **not** contain this FY 2016 provision: "amounts obligated but not expended by a tribe or tribal organization for contract support costs for such agreements for the current fiscal year shall be applied to contract support costs otherwise due for such agreements for subsequent fiscal years."

### House and Senate IHS bill language:

- For payments to tribes and tribal organizations for contract support costs associated with Indian Self-Determination and Education Assistance Act agreements with the Indian Health Service for fiscal year 2017, such sums as may be necessary: *Provided*, That notwithstanding any other provision of law, no amounts made available under this heading shall be available for transfer to another budget account.

House and Senate BIA bill language:

- For payments to tribes and tribal organizations for contract support costs associated with Indian Self-Determination and Education Assistance Act agreements with the Bureau of Indian Affairs for fiscal year 2017, such sums as may be necessary, which shall be available for obligation through September 30, 2018: *Provided*, That notwithstanding any other provision of law, no amounts made available under this heading shall be available for transfer to another budget account.

Senate IHS Report Language:

- The Committee has continued language from fiscal year 2016 establishing an indefinite appropriation for contract support costs estimated to be \$800,000,000, which is an increase of \$82,030,000 above the fiscal year 2016 level. The Committee has modified language to delete a provision that contradicted certain provisions of the Indian Self-Determination and Education Assistance Act.

House IHS Report Language:

- The Committee recommends an indefinite appropriation estimated to be \$800,000,000 for contract support costs incurred by the agency as required by law, \$82,030,000 above the fiscal year 2016 enacted level.
- The recommendation continues bill language making available for two years such sums as are necessary to meet the Federal government's full legal obligation, and prohibiting the transfer of funds to any other account for any other purpose. Language addressing contract funds that go unspent in a given fiscal year is discontinued.

Senate BIA Report Language:

- The Committee has continued language from fiscal year 2016 establishing an indefinite appropriation for contract support costs estimated to be \$278,000,000, which is an increase of \$1,000,000 above the fiscal year 2016 level. The Committee believes fully funding these costs will ensure that tribes have the necessary resources they need to deliver program services efficiently and effectively. The Committee also modified the language to delete a provision that contradicted certain provisions of the Indian Self Determination Act.

House BIA Report Language:

- The Committee recommends \$278,000,000 for Contract Support Costs, \$1,000,000 above the fiscal year 2016 enacted level and equal to the budget request.
- The recommendation continues bill language making available for two years such sums as are necessary to meet the Federal government's full legal obligation, and prohibiting the transfer of funds to any other account for any other purpose. Language addressing contract funds that go unspent in a given fiscal year is discontinued.

Finally the House and Senate bills continue prior language in the General Provisions section:

- Contract Support Costs, Prior Year Limitation  
Sec. 405. Sections 405 and 406 of division F of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) shall continue in effect in fiscal year 2017.

Contract Support Costs, Fiscal Year 2017 Limitation

Sec. 406. Amounts provided by this Act for fiscal year 2017 under headings “Department of Health and Human Services, Indian Health Service, Contract Support Costs” and “Department of the Interior, Bureau of Indian Affairs and Bureau of Indian Education, Contract Support Costs” are the only amounts available for contract support costs arising out of self-determination or self-governance contracts, grants, compacts, or annual funding agreements for fiscal year 2017 with the Bureau of Indian Affairs or the Indian Health Service: *Provided*, That such amounts provided by this Act are not available for payment of claims for contract support costs for prior years, or for repayment of payments for settlement or judgments awarding contract support costs for prior years.

What’s Next. While Congressional leaders have said they want to enact FY 2017 appropriations bills via a “regular order,” it appears increasingly likely that there will need to be a Continuing Resolution that would run from October 1 past the November election, maybe into December. Hopefully that would be followed by Congress enacting FY 2017 appropriations bills, likely through a multi-agency omnibus bill. The work that has been done by the Appropriations Committees will certainly be part of the discussion in the development of any final appropriations bill.

Congress will not be in session the last two weeks of July (for the Republican and Democratic Presidential Conventions) and the entire month of August.

We will continue to follow the FY 2017 appropriations and other CSC-related developments. If you have any questions about this memorandum, please do not hesitate to contact Joe Webster ([jwebster@hobbsstrauss.com](mailto:jwebster@hobbsstrauss.com) or 202-822-8282), Geoff Strommer, ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745), or Steve Osborne ([sosborne@hobbsstrauss.com](mailto:sosborne@hobbsstrauss.com) or 503-242-1745).